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September 11, 2017

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, NW
Eighth Floor
Washington, DC 20005
Via E-Docket and Overnight Mail

**RE: Formal Case No. 1130 and Rulemaking 46-2015-01-E -
Comments of the National Energy Marketers Association**

Dear Secretary Westbrook-Sedgwick:

The National Energy Marketers Association (NEM) submits for filing the Comments of the National Energy Marketers Association in the above-referenced proceedings.

Thank you for your assistance.

Respectfully submitted,

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Craig G. Goodman
President, NEM

Cc: Service List

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

In the Matter of)	
The Investigation into the)	
Public Service Commission’s Rules)	Rulemaking 46-2015-01-E
Governing the Licensure and Bonding)	
Of Electric Suppliers in the)	
District of Columbia)	

In the Matter of)	
The Investigation into)	
Modernizing the Energy Delivery System)	Formal Case No. 1130
For Increased Sustainability)	

**COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby submits comments pursuant to the Commission’s Notice of Third Proposed Rulemaking [hereinafter “third NOPR”] published in the August 11, 2017, D.C. Register, on the adoption of a new Chapter 46 of Title 15 of the District Code of Municipal Regulations which would establish rules pertaining to the licensure and bonding of electricity suppliers in the District of Columbia. A first NOPR on these rules was issued by the Commission on February 6, 2015, and a second NOPR was issued on February 17, 2017. NEM filed comments in response to the initial NOPR and second NOPR.²

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

² NEM’s Comments dated March 9, 2015, and March 20, 2017, are incorporated by reference herein.

The Commission's current requirements for electric supplier licensing and bonding were established in Formal Case 945 in Order No. 11796 and Order No. 11862, respectively. NEM appreciates the Commission's consideration of NEM's recommended changes to the proposals in the initial and second NOPR, and incorporation of some of those changes to the proposed rules. In these limited comments, NEM is reiterating certain concerns it previously expressed with regard to the rule provision on supplier notification of solicitation of customers as well as the expansive proposal to require supplier filing of any marketing materials. NEM requests that the Commission consider changing these proposals to strike a more appropriate balance in the supplier regulatory compliance burden with the level of consumer protection and Commission oversight that can be achieved by those measures.

NEM's comments on the third NOPR on licensing and bonding regulations are ordered in conformance with the proposed section numbering and are set forth below:

1) 4603.11 Solicitation of Customers

Proposed Section 4603.11 has been modified from the proposed language in the initial and second NOPR to require licensees, both new and existing who have not begun serving residential or small commercial customers, to provide a one-time, seven day advance notice to the Commission and the Office of People's Counsel that they will begin "soliciting or marketing to customers" in the District of Columbia. The notification shall include a copy of the supplier's proposed marketing materials. The Commission has also proposed that a supplier's failure to provide it with the one-time notice prior to marketing or soliciting would constitute just cause for Commission action against a supplier in Proposed Section 4609.2(v).

The proposed language on the one-time notice of solicitation customers in the third NOPR has been changed from the second NOPR and the initial NOPR. The second NOPR incorporated language that would have required the licensee to provide the notification “as soon as” the licensee began marketing and soliciting customers. NEM supported the approach in the second NOPR. The initial proposed language would have required electric suppliers to provide the Commission with ten days advance notice before starting to solicit customers. In NEM’s previously filed comments we explained that the difference between the ten day advance notice requirement versus the approach of providing notice “as soon as” the activity begins is that it would impede suppliers in their ability to respond to dynamic market conditions and making responsive product offerings available in the marketplace. The reversion to the seven day advance notice requirement in the third NOPR creates similar concerns and constraints on supplier flexibility to respond to changing market conditions. A seven day advance notice requirement needlessly delays supplier marketing campaigns. Moreover, it does not materially improve the quality of the notification to the Commission. NEM respectfully requests that the Commission incorporate the language permitting supplier notice “as soon as” marketing and soliciting” activities commence that it previously employed in the second NOPR.

In this third iteration of the rules, the proposed language in this section has also been revised to include a requirement that the one-time notice by the licensee of the start of marketing and solicitation activity, including the filing of proposed marketing materials, be made not only to the Commission but to the Office of People’s Counsel (OPC) as well. The licensing and bonding rules should be limited in their scope to the oversight exercised by this Commission inasmuch as this Commission and its Staff are the entities that will enforce those rules.

2) 4608.1(a) Updates to an Approved Application

Proposed Section 4608.1(a), would require that if a licensee changes “any of its marketing materials,” that those new materials must be provided to the Commission and OPC as soon as those materials are to be used to solicit customers. NEM previously expressed its concerns with the large scope of the compliance obligation created by this proposal in prior comments. A reasonable approach that reflects general industry practice is to require suppliers to file a representative sample of their marketing materials. Otherwise, as presently worded, this Section creates an open-ended and on-going obligation for suppliers to provide any of their marketing materials as they change over time. Competitive suppliers revise and modify their marketing materials to make substantive and administrative changes, to reflect changing market conditions, to create ever-evolving product and service offerings, to incorporate new marketing strategies, and the like. NEM continues to recommend that requiring a supplier to submit “any of its marketing materials” that have changed would be burdensome to comply with and would also generate so many filings that it may be administratively infeasible for Commission Staff to review all of the materials. NEM submits that requiring suppliers to make a filing of a representative sample of marketing materials will strike an appropriate balance between the regulatory compliance burden and providing the Commission with sufficient information to perform an informed review. Moreover, in the event a specific question arises with respect to a supplier’s marketing materials, the supplier can make additional materials available upon request. NEM also questions the proposed inclusion of the obligation to make all of such materials available to OPC as an on-going requirement for the reasons set forth in our comments in regard to Proposed Section 4603.11.

Conclusion

NEM appreciates this opportunity to offer its comments on the Commission's third NOPR on proposed licensing and bonding regulations.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman", with a long horizontal line extending to the right.

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Dated: September 11, 2017.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September 2017 that a copy of the foregoing Comments of the National Energy Marketers Association was served via email on the parties on the official service list in Formal Case No. 1130 and RM46-2015-01.

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